IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 1092 OF 1997

Kasturba Mahila Mandal and anr..... Petitioner

versus

Smt. Prabhaben Mistry and anr..... Respondent.

Shri S.J.Panicker with Mrs. Pallavi Vishwasrao for the petitioner.
Shri M.P. Vashi i/b.M.M.Vashi for Respondent no.1.

CORAM; A.P. DESHPANDE, J.
DATED; 5TH JUNE, 2007

JUDGMENT;

1. The petitioner no.1 is a society so also public trust which administers and manage a secondary school in the name and style of Shivaji Park Lion's High School. Petitioner no.2 is the Secretary of the society. By the present writ petition, the petitioners question the legality and validity of the judgment and order passed by the School Tribunal allowing the appeal filed by the respondent no.1 calling in question the correctness of the decision of the management in reducing her in rank from the post of Head Mistress to that of Assistant Teacher.

2. The respondent no.1 was initially appointed as Asstt. Teacher in the year 1967 and by virtue of her

seniority and satisfactory record of her service, came to be promoted as Head Mistress in the year 1977. She continued to work as such as Head Mistress from the year 1977 to 1992 when the present petitioners initiated enquiry against the petitioner for charges of unsatisfactory work and other lapses in relation to her duties as Head Mistress.

3. Statement of allegations were served on the respondent no.1 and the respondent refuted the same by replying. As the respondent no.1 had disputed and denied the charges touching misconduct, an enquiry committee was constituted. According to the provisions of Rule 36 of the MEPS Rules an enquiry committee need to be constituted comprising of the president of the management, a nominee of the Head Mistress and State Awardee Head Mistress, In the present case one Smt. Kamlaben I.Patel who is president of the society was there in the committee along with Shri S.N.Dixit, the nominee of the employee and Shri J.M.Shah- State Awardee teacher. During the course of enquiry the president of the society Smt. Kamlaben Patel vide letter dated 4-1-1993 nominated Shri J.M.Shroff as convener of the enquiry committee. Admittedly Shri Shroff is the Chief Executive Officer who was representing the management and the burden lay on him to establish the charges. Strangly enough the

Chief Executive Officer (who perform the role of presenting officer) came to be nominated as convener by the President and subsequent to the said nomination the proceedings reveal that Shri Shroff has signed the minutes at two places, one as a convener and other as Chief Executive Officer. The main objection raised by the respondent no.1 before the school tribunal in the appeal was to the effect that nomination of Shri Shroff the Chief Executive Officer as convener of the enquiry committee by the president was wholly illegal and contrary to the provisions of Rule 36 of the MEPS Rules. It was contended that the rules postulates setting up of an enquiry committee which comprises of three persons, and the president of the society is to act as convener, but the president illegally appointed the Chief Executive Officer himself as the convener of the society. The respondent no.1 submits that the very constitution of the enquiry committee was contrary to the mandate of the provisions of the rules and thus the entire proceedings stand vitiated. The School Tribunal has accepted the said contentions raised by the respondent no.1 and held the enquiry to be vitiated on account of Shri Shroff’s nomination as convener.

4. The other ground which was pressed in service before the tribunal in appeal by the respondent no.1

was to the effect that proceedings of the enquiry were concudcted in breach of principles of natural justice in as much as the employee was denied a fair opportunity to cross examine the witnesses of the management by resorting to tricky method. It so happened that the management did not examine any witness on the ground that the charges were proved by the documents, which were admitted by the delinquent employee. Relying on the so called admission of the documents by the employee the management chose, not to examine any witness and thus according to the respondent no.1 she was denied a reasonable opportunity of cross examination of the witnesses which could have falsified the charges. The Tribunal has accepted that by not examining any witness, no charge can be said to have been proved and non-examination of any witness by the management further results in denying a fair opportunity to the employee to cross examine the witnesses. The tribunal then proceeds to hold that the enquiry had been conducted in breach of principles of natural justice.

5. The judgment of the Tribunal further reveals that the learned counsel for the school management has sought permission to hold a denovo enquiry, as the tribunal was of the view that the enquiry conducted by the management was not just and fair. The tribunal

accepting the said submission of the learned counsel for the management, did grant liberty to hold a denovo enquiry but instead, the present petitioners chose to file the present writ petition. At the time of issuing rule, this court had directed the petitioner to reinstate the respondent no.1 as Head Mistress and I am informed that the respondent no.1 was reinstated as Head Mistress with effect from 13-1997. It will not be out of place to state at this juncture that the respondent no.1 stood retired from service on attaining the age of superannuation with effect from 30-9-1997.

6. With the above facts situation, the learned counsel for the petitioners has contended that the president of the petitioner no.1 society wrongly nominated Shri Shroff as convener of the enquiry committee, but as a matter of fact, he did not act as such. It is submitted that the mistaken nomination by president, of which Chief Executive Officer as convener of the enquiry committee, will not ipso facto vitiate the enquiry. He submits that unless and until prejudice is shown to have been caused to the employee, the wrong nomination of Shri Shroff as convener will not vitiate the enquiry.

7. Per contra, Mr. Vashi the learned counsel for the

respondent no.1 points out from the record of the proceedings that not only Shri Shroff was nominated as convener but he has acted as such and the said fact stands substantiated as Shri Shroff has also signed the proceedings as convener of the enquiry committee. It is noticed from the proceedings that Shri Shroff has signed in duel capacity as one as convener of the enquiry committee and two, as Chief Executive Officer of the society. It thus appear that the appointment of Shri Shroff as convener more so when he was acting as the Chief Executive Officer would vitiate the enquiry, for the reason that the representative of the management, would be there on the enquiry committee as well. Record further reveals that the respondent no.1 had infact objected to the nomination of the Chief Executive Officer Shri Shroff as convener of the enquiry committee but the enquiry committee has brushed aside the said objection by justifying the action of the president in nominating him as such. The school tribunal, by taking a possible view of the matter, has concluded that inclusion of Shri Shroff as convener of the enquiry committee is illegal being in breach of rule 36 of the rules. The said finding of the school tribunal does not need to be interfered with. The charges of misconduct were of serious nature levelled against a Head Mistress of the school, who had put in long years of service, and hence the

management ought to have establish the charges by leading proper evidence. The tribunal has observed that barring a stray sentence in the proceeding dated 21-4-1993, there is no mention of the documents being admitted by respondent no.1. Though the proceedings bear the signature of the respondent no.1, which contain the statement of the respondent no.1 as having admitted documents, the delinquent employee had immediately objected to the recording of the proceedings dated 31-1-1993, by contending that the respondent no.1 did not admit all the documents on record, so as to conclude that the employees admit the charges themselves. The school tribunal has rejected that part of the record of the proceedings, which goes to indicate that the delinquent has admitted all the documents. In view of the firm and positive denial of the said statement by the employee which was followed by a letter to that effect dated 3-5-1993 which is considered in paras 10 and 11 of the judgment, tribunal has rightly rejected the claim of the management, 'that all the documents were admitted by delinquent employee and there was no need for the management to examine any witness and documents by themselves, goes to establish the charges of misconduct'.

8. Perusal of the record further reveals that in the

absence of any evidence on record which could be accepted in law, it is not possible to conclude that the charges of misconduct are established. The petitioner, having realised before the tribunal itself that the enquiry was not just and fair, has sought liberty to initiate a denovo enquiry, toughing the charges and the tribunal had granted such liberty. which has not been availed of. I am in complete agreement with the view taken by the tribunal that in the absence of examining any witness, no charge can be said to have been proved only on the basis of some documents that are placed on record. On the contrary no examination of witnesses by management goes to deny reasonable opportunity to the employee a chance to effect the cross examination of witnesses and thereby demolish the charges of misconduct. During pendency of this petition, the respondent no.1 has retired from service on attaining the age of superannuation. Truly speaking from the date of retirement of respondent no.1, a period of ten years have lapsed and hence there is no question of any further enquiry by the management.

9. Perused the judgment and order passed by the tribunal. The same does not suffer from any impropriety and illegality, warranting any interference in the writ jurisdiction.

10. In the result, the writ petition fails and it is dismissed. Rule is discharged.

11. In view of the disposal of the writ petition, Civil application does not survive and the same is also dismissed.

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